

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Federal Trade Commission,

No. CV-23-02711-PHX-DWL

Plaintiff,

V.

Grand Canyon Education, Inc., *et al.*,

Defendants.

**NOTICE OF PLAINTIFF'S
SUMMARY OF DISCOVERY
DISPUTE**

Pursuant to the Court’s Case Management Order (ECF 70), Plaintiff Federal Trade Commission (“FTC”) submits the following statement regarding the parties’ dispute concerning the deadlines for completing fact discovery and pretrial disclosures. Although the Case Management Order provides for completion of fact discovery by May 15, Defendants have not substantially completed responding to production requests – including requests served in September 2024. All parties agree that the Case Management Order should be modified, but differ on interim deadlines. Plaintiff has requested that Defendants provide their statement of position in accordance with the summary procedure set forth in the Case Management Order. Defendant Grand Canyon Education, Inc. (“GCE”), has declined, stating that it plans to move separately; Defendant Brian E. Mueller has not responded separately.

1 The FTC seeks amended deadlines for completing fact discovery and pretrial
 2 disclosures required under Rule 26(a)(3) (ECF 70 ¶ 5) primarily because of ongoing
 3 document productions by Defendants, including responses to requests served in 2024.
 4 Some productions are also contingent on notices pursuant to the Family Educational
 5 Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g et seq., that have yet to be issued
 6 (ECF 79 ¶ 9). The FTC requests that the Court require production of material responsive
 7 to the 2024 discovery requests by June 30, followed by completing responses to 2025
 8 requests and depositions. The FTC proposes the Case Management Order be amended to
 9 provide:

10	Defendant GCE shall substantially complete sending the notices to students regarding education records subject to FERPA by no later than	May 30
11	Defendants shall complete production of documents in response to written discovery served in 2024 and	
12	Defendant GCE shall produce education records covered by FERPA notices in accordance with Paragraph 13 of the FERPA Order by no later than	June 30
13	Responses to requests for document production and interrogatories served in 2025 shall be completed by no later than	August 8
14	The deadline for completing deposition discovery is extended to	September 8
15	The deadline for Pretrial Disclosures required under 26(a)(3) is extended to	September 12
16	The deadline for Good Faith Settlement Talks (ECF 70 ¶ 11) is extended to	September 15
17	The deadline for submitting discovery disputes, absent extraordinary circumstances, (ECF 70 ¶ 7.c) is extended to July 15 for disputes regarding written discovery served in 2025, and to September 12 for disputes arising from depositions noticed after May 15. ¹	

22 The FTC’s proposal is based on the following developments since the Case

23
 24 ¹ The proposed amendments will necessitate changes to the dates for expert discovery
 insofar as the Case Management Order contemplates that such discovery be deferred
 until after fact discovery is completed. The FTC proposes the following dates after the
 25 deadline for fact depositions: Expert Disclosures by the Party with Burden of Proof,
 9/23/2025; Responding Party Expert Disclosures, 10/31/2025; Rebuttal Expert
 26 Disclosures, 11/25/2025; Expert Depositions completed by 1/9/2026; dispositive
 motions by 2/27/2026.

1 Management Order was entered:

2 • On September 6, 2024, the FTC served document requests relating to the nonprofit
3 claims (ECF 115-3, Requests 1 and 2; ECF 97-1, Requests 1 and 2). Defendants brought
4 serial challenges to this discovery, including an unsuccessful motion for protective order
5 that this Court denied on March 6, 2025. ECF 144; *see also* ECF 99, ECF 120
6 (resolving discovery disputes regarding these requests). Defendants have not completed
7 production of documents responsive to these requests.

8 • On September 6, 2024, the FTC also served document requests that included
9 education records for which FERPA requires notice to students prior to disclosure in
10 discovery. *See* ECF 79. In March 2025, in advance of a hearing on the parties' dispute
11 regarding these notices, Defendant GCE agreed to issue FERPA notices for certain
12 records responsive to Requests 7 and 10. ECF 148 at 7; Ex. B at 5 (Request 7). Issuance
13 of notices to students identified in these records also removes the barrier to production of
14 data responsive to the FTC's Interrogatory 1 to Defendant GCE, and Document Request
15 8 to Defendant Mueller. *See* ECF 148-1 at 5; ECF 148-2 at 4. Defendant GCE sent some
16 FERPA notices in March and April (ECF 154, 164). However, GCE has not completed
17 sending the notices it agreed to issue in advance of the April 2 hearing on FERPA
18 notices (ECF 158), and has not committed to a date to produce the records and data
19 subject to release based on the FERPA notices. ECF 79 ¶ 13.

20 • On September 6, 2024, and December 6, 2024, the FTC also served discovery
21 requests concerning Defendant GCE's telemarketing, procedures for do-not-call
22 compliance, and marketing of doctoral programs. *See* ECF 115-3 (Requests 3-10). On
23 November 4, GCE reported that it anticipated completing production in response to the
24 September 2024 requests "by January 31, 2024" [sic]. Ex. A at 2. In February, however,
25 GCE announced limits on its search of ESI, and disagreements remain regarding the
26 limits it has imposed. Moreover, Defendant GCE has not completed producing records

1 responsive to the December 2024 requests that do not include personal information
2 subject to FERPA.

3 • In addition to the discovery regarding the nonprofit deception claims discussed
4 above, the FTC has outstanding requests for production of documents to Defendant
5 Mueller, served in September 2024, for which Defendant Mueller has not completed the
6 production of responsive records, and has not reported when he will complete
7 identification and production of nonprivileged records responsive to these requests.

8 • The FTC is also awaiting responses to discovery requests served in March 2025.
9 Both Defendant GCE and Mueller have requested extensions or given responses that
10 leave uncertain whether the parties will be able to resolve disputes regarding these 2025
11 requests. Defendant Mueller has refused to report when he reasonably anticipates
12 producing responsive records. Defendant GCE has stated that, to the extent it does not
13 object to the request, it anticipates completing its response by May 30 – after the May 15
14 deadline for completing fact discovery and providing pretrial disclosures. The FTC's
15 proposed amendments include deadlines for disputes regarding this 2025 discovery and
16 the production of responses.

17 • The FTC has taken six depositions, but the documents to be produced in response to
18 the outstanding discovery requests will impact the selection of witnesses for additional
19 depositions and the examination of those witnesses. The FTC seeks an extension that
20 will permit it to notice and take the remaining depositions after it receives Defendants'
21 discovery responses.

22 Accordingly, there is good cause for modifying the Case Management Order to
23 set deadlines for the FERPA notices and completing responses to the 2024 discovery
24 requests, followed by extension of the dates for depositions and pretrial disclosures. The
25 FTC has been diligent in pursuing discovery pursuant to the Case Management Order,
26 and is seeking responses to timely requests. The modifications the FTC proposes will
advance efficient resolution of the case.

Local Rule of Civil Procedure 7.2(j) Certification

I certify that counsel for the Federal Trade Commission (“FTC”) attempted to resolve this matter through written correspondence, telephone consultation, and sincere efforts as required by Local Rule of Civil Procedure 7.2(j) before reaching an impasse.

5 In particular, counsel for the FTC and all Defendants participated in a telephone
6 conference on April 25, 2025, in which counsel for the parties discussed outstanding
7 discovery disputes and modification of the deadlines for discovery. Counsel for
8 Defendant GCE provided a written proposal for an amended schedule on Monday
9 morning, April 28, 2025; counsel for the FTC provided a counterproposal at 5:00 pm
10 that afternoon. Counsel for Defendants did not respond to the counterproposal, and
11 counsel for the FTC sent a draft Joint Written Summary of Dispute setting forth the
12 FTC's position and proposed schedule on May 1, 2025. Counsel for GCE responded to
13 the FTC position in the Joint Written Summary on Friday, May 2, with a proposed
14 alternative schedule; FTC counsel provided a proposed schedule and revised Joint
15 Written Summary of Dispute the following Monday, May 5. Counsel for the FTC
16 exchanged telephone calls and emails with Counsel for GCE regarding proposed
17 schedules on May 5, 6, and 7. On May 6, Counsel for Defendant Mueller reported in a
18 telephone call that he would follow Defendant GCE's position regarding the FTC's
19 proposal. On May 7, in a telephone conference, counsel for Defendant GCE reported
20 that Defendant GCE rejected the proposal circulated by FTC counsel on May 6 and
21 would not provide a statement of position for the summary statement the FTC had
22 circulated on May 1 and May 5, because GCE did not consider the Joint Summary of
23 Written Dispute procedure to be applicable. Counsel for Defendant GCE stated that

1 Defendant GCE would file a motion to amend the Case Management Order rather than
2 follow the joint summary procedure.

3 Respectfully submitted,

4 DATED: May 7 2025

FEDERAL TRADE COMMISSION

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By: /S/

7 Michael E. Tankersley

8 Gregory A. Ashe

9 Patrick Roy

10 Carlton B. Mosley

11 FEDERAL TRADE COMMISSION

12 600 Pennsylvania Avenue NW

13 Mail Stop CC-6316

14 Washington, DC 20580

15 Telephone: (202) 326-2991

16 Email: mtankersley@ftc.gov

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13 Attorneys for Plaintiff

14 FEDERAL TRADE COMMISSION